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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable John D. Harrison  
Superintendent, State Banking Department  
Post Office Box 4600  
Montgomery, Alabama 36103

Banking Department – Subpoenas – Circuit  
Courts

The Superintendent of the State Banking Department ("Superintendent") has the authority to issue subpoenas without the necessity of requesting the subpoena from the circuit court. In case of non-compliance with the subpoena, it is enforceable through an order of the circuit court.

Dear Superintendent Harrison:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does section 5-3A-6 of the Code of Alabama, award the Superintendent of Banking, and those acting under him or her, the authority to issue subpoena and subpoena duces tecum to effectuate its purpose?

FACTS AND ANALYSIS

Section 5-3A-6 of the Code of Alabama states, in pertinent part, as follows:

The superintendent and every examiner acting under the superintendent may administer oaths and may examine under oath any person whose testimony may be required on the examination of any bank, on the

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examination of any affiliate of a bank, or on the examination of any agency of any foreign bank and shall have authority and power to compel the appearance and attendance of any such person or the production of any records and documents of any bank, any affiliate of a bank, or any agency of a foreign bank for the purpose of any examination and attendance or production may be enforced by order of a circuit court. . . .

ALA. CODE § 5-3A-6 (Supp. 2007).

The language of this statute is remarkably similar to that used in section 11-43-163 of the Code regarding city councils. Section 11-43-163 of the Code states that "[t]he council or a committee thereof duly authorized by resolution may summon witnesses and compel their attendance and compel witnesses to testify and produce books and papers . . ." ALA. CODE § 11-43-163 (1989). Under neither statute is the word "subpoena" used, but it must be inferred that under our established practice there is no means of obtaining the presence of witnesses or the production of documents other than by subpoena.

In an opinion issued to Emmett O'Neal Griswold, Jr., Attorney, City of Samson, dated January 6, 1999, A.G. No. 99-00076, this Office stated, with respect to section 11-43-163, the following:

The provision of the Code gives a city council or a committee authorized by the council the authority to issue subpoenas by resolution of the city council or by resolution of the committee. The statute does not require the council to file the request for a subpoena with the circuit court or circuit clerk.

*Id.* at 2.

Similarly, it is the opinion of this Office that section 5-3A-6 of the Code gives the Superintendent of Banking the authority to issue subpoenas without the necessity of requesting it from the circuit court. If there is non-compliance with the subpoena, section 5-3A-6 provides that it is enforceable through an order of the circuit court.

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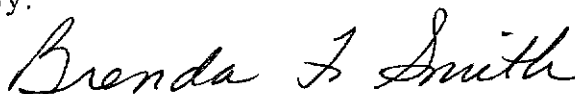
CONCLUSION

Under section 5-3A-6 of the Code, the Superintendent of Banking has the authority to issue subpoenas without the necessity of requesting the subpoena from the circuit court. In case of non-compliance with the subpoena, it is enforceable through an order of the circuit court.

I trust that this opinion answers your question. If this Office can be of further assistance, please contact me.

Yours very truly,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda A. Smith".

BRENDA A. SMITH  
Chief, Opinions Division

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